Supreme Court, U.S.
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No. 92-1352

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

HAROLD A. PETERSON; MARY J. PETERSON,
Petitioners,

v.

SOO LINE RAILROAD COMPANY;
DCA HEALTHCARE MANAGEMENT GROUP, INC.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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RESPONDENT DCA HEALTHCARE'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

The restated question presented for review is as follows: Did the Ninth Circuit Court of Appeals correctly rule that Petitioners Petersons' state law claims were preempted under federal law because such claims referenced and were related to a healthcare program or plan governed by the provisions of the Employee Retirement Income Security Act (ERISA).

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OPINIONS BELOW

The Ninth Circuit Court of Appeals stated that disposition of the case was not appropriate for publication and it has not been published.

JURISDICTION

1. The Judgement in the Ninth Circuit Court of Appeals was entered on 15 October, 1992.

2. The Supreme Court has jurisdiction to consider a Petition for Writ of Certiorari pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A. Statement of jurisdiction in the Ninth Circuit Court of Appeals.

Respondent DCA Healthcare Management Group, Inc., (hereinafter referred to as "DCA") agrees with Petitioners' statement of jurisdiction in the Ninth Circuit Court of Appeals as set forth on page 3 of their Petition.

B. Statement of the case and facts.

Joseph V. Salo was employed by the Milwaukee Railroad from 1954 until 1979 when he left employment due to severe health problems and disability. During his employment with Milwaukee Railroad and at the time of his disability, Mr. Salo and his dependents were covered by Milwaukee's health care program. At that time, his dependents included a child, Heather Salo, and his former wife, now Petitioner Mary J. Peterson. Even though no longer employed by Milwaukee Railroad, Mr. Salo's health care program extended coverage to himself and to his dependents until he became eligible for Medicare.

The Milwaukee Railroad was purchased and absorbed by Soo Line Railroad Company (hereinafter "Soo Line") in 1985. At that time, Soo Line assumed certain employee benefits including the health care program which provided benefits for Mr. Salo's children, including Heather Solo. Soo Line contracted to DCA the contract to handle and administer all health claims under the Soo Line plan.

Even though Mr. Salo's coverage under the Milwaukee Plan was to have ceased at the time he became eligible for Medicare (which occurred in March of 1980); Mr. Salo had been, mistakenly, named on and carried over for benefits under the Soo Line health plan. In June of 1986 the mistake was discovered and Soo Line informed DCA that Mr. Salo's benefits were thereby terminated.

To digress, on April 22, 1986, Heather Salo was admitted to the Deaconess Medical Center in Billings, Montana, for treatment of emotional and mental problems. She remained in the hospital until July 20, 1986, and during her hospitalization her mother, Petitioner Mary J. Peterson and her stepfather, Petitioner Harold A. Peterson, began looking for a long-term placement facility for Heather.

On May 29, 1986, Mary Peterson made a telephone call to the offices of DCA, who was still the plan supervisor for the Soo Line "self funded" employee medical benefit plan. Essentially she asked whether or not an in-patient mental health care facility would be covered under the Soo Line medical benefit plan for her daughter. She was advised that all persons making inquiries about "coverage" for a specified medical condition must also contact the employer (Soo Line) to verify that the employee or dependent was actually eligible for "coverage" under the specific terms and conditions of the applicable medical care plan. She was also advised that she would have to call Review Plus to make a determination of whether the health care was "medically appropriate" or medically necessary. Review Plus was the service provided to Soo Line by Health Risk Managament (HRM) to review possible hospitalizations of plan members.

The Petitioners, Mary and Harold Peterson, eventually signed an agreement for private placement of Heather with the Excelsior Youth Center, Inc. in Aurora, Colorado, and agreed to make payments to them.

Heather was placed in Excelsior in July of 1986 through 1987, and the Petersons were billed $26,257.32 for the cost of her treatment. Essentially, demand was made upon DCA to pay the medical bills under the Soo Line plan and the plan refused to pay the bills upon the grounds and for the reasons that it had been notified by the Soo Line that there was no coverage or benefits payable because Mr. Salo had been placed upon Medicare

benefits in 1980, and that the plan for Mr. Salo and his dependents legally terminated at that time even though benefits had mistakenly been paid for Heather Salo after that time. Excelsior brought an action against the Petersons and recovered judgment for the principal sum, interest, and costs for $33,856.20.

Thereafter, in 1989, Petitioners filed a complaint against Soo Line and DCA as the self-insurer and the administrator of the health care plan. The complaint was filed in Montana under various alternative state law theories including breach of contract, both express and implied, promissory estoppel, laches, and a breach of the implied covenant of good faith and fair dealing. Respondents removed the case to Federal District Court in Billings, Montana, asserting that the action came within the purview of the Employee Retirement Income Security Act (ERISA), and that Petitioners' claims were preempted under ERISA. At first the United States District Court refused to grant Soo Line and DCA's Motion to Dismiss and stated:

> "Whether Plaintiffs are able to factually establish the existence of an implied contract and breach thereof, without reference to or reliance upon the existence of the health care program, are issues which properly await resolution at a later stage of these proceedings."

Thereafter, after extensive discovery, Soo Line and DCA moved the Court for summary judgment and the United States District Court granted Soo Line and DCA summary judgment on May 8, 1991.

Essentially, the District Court found that ERISA preempts state remedies which either directly or indirectly relate to an employee benefit plan and found that the Petitioners Petersons were making reference to and relying upon a health and employee benefit plan. The District Court noted in its opinion in part as follows:

> "ERISA preempts state remedies which either directly or indirectly relate to an employee benefit plan,

see Dependahl v. Falstaff Brewing Corp., 653 F.2 1208, 1215 (8th Cir.), *cert. denied*, 454 U.S. 1084 (1981), so long as the relationship is not "too tenuous, remote or peripheral." *Shaw*, 463 U.S. at 100 n. 21. Preemption is appropriate where the state claims raised involve benefits relating to past employment. *Scott v. Gulf Oil Corp.*, 754 F.2d 1499, 1505-06 (9th Cir. 1985). *See, also, Settles v. Golden Rule Life Ins. Co.*, 927 F.2d 505 (10th Cir. 1991). Only where the state claims have no such relationship will preemption be deemed inappropriate. *Sorosky v. Burroughs Corp.*, 826 F.2d 794, 800 (9th Cir. 1987).

Here, the record is replete with references to and reliance upon the plan at issue. The complaint itself states that defendants were contractually obligated to pay for the health care of Heather at Excelsior upon several theories to include:

> A. That there was an *express health care contract* which provided for benefits for Mary Heather Salo.
>
> . . .
>
> C. The *contract for health care* of Mary Heather Salo is established by past consideration *related to the employment* of Joseph V. Salo by the Milwaukee Road.
>
> . . .
>
> G. There is a contract arising by reason of long term course of action wherein the Defendant Railroad has provided health care payments for the children of Joseph V. Salo without question until July 1987.
>
> . . .

(Emphasis supplied).

Correspondence, dated September 8, 1988, directed from plaintiffs' counsel to the manager of the Benefits Administration for Soo Line stated:

> The program at Milwaukee Road at the time Joe Salo became disabled was that he would con-

> tinue to be covered for medical expenses and his dependents would continue to be covered . . .

Also, correspondence, dated August 12, 1987, directed from plaintiffs' counsel to the same stated:

> Our firm has been retained by Mary Salo Peterson with respect to the medical group coverage for her family which was issued under her previous husband, Joseph V. Salo.

Further, plaintiffs, in their brief, set forth the following:

> Certainly the existence of a medical plan and the course of conduct of the Defendants are part of the facts which establish reliance on and form a portion of the factual representations made to the Plaintiffs.

From these references to the health care plan, as well as the facts of the case presented by the parties, the Court can make no other finding that the plaintiffs relied on the benefit provisions of the plan as it related to the medical care received by Heather Salo. The finding is made notwithstanding any other alleged representation that plaintiffs may have relied upon in asserting their common law claims.

Having established that plaintiffs did indeed rely upon and relate to the health care plan at issue in asserting their claims, the Court's attention then turns to the legal effects of reliance on the claims asserted in regard to preemption. The Ninth Circuit has held that ERISA preempts various common law theories to include those of contract implied in fact, breach of contract, fraud, promissory estoppel, estoppel by conduct and deceit." (citing cases) * * *

(See Pet. Appendix B, pp. 11a and 12a)

The Ninth Circuit Court of Appeals affirmed the Federal District Court.

REASONS FOR DENYING THE WRIT

I. THE UNITED STATES DISTRICT COURT AND THE NINTH CIRCUIT COURT OF APPEALS FOLLOWED THE PRECEDENTS ESTABLISHED BY THE UNITED STATES SUPREME COURT TO CORRECTLY RULE THAT PETITIONERS PETERSONS' STATE LAW CLAIMS WERE PREEMPTED BY ERISA.

In the leading case of *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987), the United States Supreme Court applied a "liberally expansive" interpretation to the statutory phrase "relate to" found in ERISA giving it its broad common sense meaning.

In that case, the U.S. Supreme Court held that ERISA preempts common law causes of action under state law which assert improper processing of claims under a benefit plan regulated by ERISA. In the *Pilot Life Insurance Co. v. Dedeaux*, *supra*, the U.S. Supreme Court noted that the preemption provision is "deliberately expansive," *Id.* 481 U.S. 41, 46, and further noted that the statutory phrase "relate[s] to" would be given its broadest common sense meaning. *Id.* 481 U.S. 47, 107 S.Ct. at 1553, quoting *Shaw v. Delta Air Lines*, 463 U.S. 85, 97-98, 103 S.Ct. 2890, 2900, 77 L.Ed.2d 490 (1983).

The Supreme Court went on to rule that a state law relates to a benefit plan "if it has a connection with or reference to such a plan". *Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724, 739 (1985) quoting *Shaw*, 463 U.S. at 97. In *Pilot Life Insurance Co.*, 481 U.S. 41, the Court decided that ERISA preempted claims of tortious breach of contract, breach of fiduciary duties and fraud in the inducement arising from the improper processing of a claim.

The District Court here, in conformity with the rulings of the Supreme Court, recognized that the preemp-

tive provisions of ERISA "shall supersede any and all State laws insofar as they may now or hereinafter *relate to any employee benefit plan.*" Memo. and Order at 10a, citing 29 U.S.C. § 1144(a); C.R. 120 (See Pet. Appendix B). The Court followed the general rule that the preemptive provisions of ERISA must be broadly construed. *Id.* at 6. It noted that ERISA will preempt state law remedies when those remedies directly or indirectly "relate to" an employee benefit plan.

The United States Supreme Court has thereafter consistently held that state law claims which arise from or relate to the administration of ERISA governed plan are preempted. *See FMC Corp. v. Holliday*, 498 U.S. ——, 112 L.Ed.2d 356 (1990) and *Ingersoll-Rand Co. v. McClendon*, 111 S.Ct. 478, 112 L.Ed. 474 (1990).

FMC Corp., supra, involved a "self-funded" employee benefit plan like the health care plan involved in this case. The health care plan allowed an employer to seek subrogation for any amount it paid for medical expenses when a third-party claim was involved. The Pennsylvania state statute provided there was no right of subrogation from a claimant's tort recovery payable under any program, whether it was a group program or other type of insurance. The employer sought subrogation from Holliday's third-party recovery and Holliday objected stating that the state statute voided any subrogation clause. The United States Supreme Court held that ERISA preempted application of the Pennsylvania statute. *Id.* at 356-357. This Court went on to review of all of the numerous decisions which regarded the broad preemptive force of ERISA and held:

> "The preemption clause is conspicuous for its breadth. It establishes an area of exclusive federal concern the subject of every state law that 'relate[s] to' an employee benefit plan governed by ERISA."

Id. at 364.

The Court went on to state:

> "[ERISA] did not mean to preempt only state laws specifically designed to affect employee benefit plans. [T]o interpret the preemption clause to apply only to state laws dealing with the subject matters covered by ERISA, such as reporting, disclosure, and fiduciary duties, would be incompatible with the provisions legislative history because the House and Senate versions of the Bill that became ERISA contained limited preemption clauses, applicable only to state law relating to specific subjects covered by ERISA. *These were rejected in favor of the present language* in the *Act*, 'indicat[ing] that the sections preemptive scope was as broad as its language.'"

The Supreme Court emphasized again that the preemption under § 514(a) of ERISA must be interpreted expansively in the decision of *Ingersoll-Rand Co. v. McClendon*, 111 S.Ct. 478, 112 L.Ed. 474 (1990). In *Ingersoll* this Court held that ERISA preempted a claim that an employer wrongfully terminated an employee in order to avoid contributing to or paying benefits under an employee pension fund.

In the case of *Settles v. Golden Rule Ins. Co.*, 927 F.2d 505 (10th Cir. 1991), the Tenth Circuit Court was faced with a similar argument to the argument of the Petitioners in this case. In *Settles, supra*, the Plaintiff brought a suit alleging that Defendant Golden Rule Ins. Co.'s actions in terminating her husband's insurance coverage caused him to have a heart attack and die. Jurisdiction was based on diversity of citizenship, and the Plaintiff's cause of action alleged among other things, breach of contract, tort of outrage, fraudulent denial of insurance coverage, and wrongful death. The Federal District Court granted Defendant's motion to dismiss holding that ERISA preempted Plaintiff's claim. The Plaintiff argued that by making her wrongful death claim, she was not seeking benefits under a benefit plan which would be controlled or regulated by ERISA. The

Court in responding to that argument held in part as follows:

> "The present case is distinguishable from [*Clark v. Coats & Clark, Inc.*, 865 F.2d 1237 at 1243-44 (11th Cir. 1989)] and those other cases that held state law claims not preempted by ERISA because here the injury alleged was a direct result of the termination of plan benefits and cannot be characterized as "wholly remote" from the benefit plan. See, e.g., *Farlow v. Union Cent. Life Inc. Co.*, 874 F.2d 791, 794 (11th Cir. 1989) (distinguishing *Clark* because in *Farlow* the "alleged conduct is intertwined with the refusal to pay benefits").
>
> The factual basis for each of plaintiff's state law claims directly concerns the alleged improper administration of the benefit plan. Although plaintiff is not seeking benefits under the insurance policy, her claims require a finding that defendant wrongfully terminated Mr. Settles' insurance coverage. Therefore, the claims relate to the employee benefit plan. Plaintiff alleges in her complaint that:
>
> > "[a]s a direct result of the defendants' termination of insurance and breach of the insurance contract, decedent William L. Settles became severely emotionally distressed, suffered extreme mental anguish and was caused to suffer [a heart attack]."
>
> R.Doc. 1 at P 16; see also *id.* at pp. 32, 44, 53. We hold that, because plaintiff's claims "relate to" an employee benefit plan covered by ERISA, they are preempted by ERISA. See 29 U.S.C. § 1144(a) (§ 514(a) of ERISA)."

Petitioners argue on page 9 of their Petition that "any relation to ERISA plan maintained by Soo Line is *TOO TENUOUS, REMOTE OR PERIPHERAL* to find that the claims relate to the plan." The District Court and the Ninth Circuit Court of Appeals considered this argument and simply disagreed. The summary of

the findings by the District Court appears on pages 4, 5 and 6 of this Brief. Also in this case the Ninth Circuit Court, adhering to the Supreme Court's expansive view of ERISA preemption held:

> * * * "State law claims which "arise from the administration of [an ERISA governed] plan[] . . ." are preempted. *Scott v. Gulf Oil Corp.*, 754 F.2d 1499, 1504 (9th Cir. 1985); *see also Greany v. Western Farm Bureau Life Ins. Co.*, 1992 U.S. App. LEXIS 20462 (9th Cir.). In determining whether a claim is preempted, it is necessary to decide whether "the conduct challenged . . . was part of the administration of an employee benefit plan" *Scott*, 754 F.2d at 1505.
>
> In *Greany*, the plaintiff had left the defendant's employ on July 31, 1983, believing his family was covered by the defendant's group health plan until August 31, 1983. In fact, the coverage terminated August 1, 1983. There was, however, at least one notice from the insurer to the plaintiffs stating that coverage terminated August 31, 1983. Unfortunately, the plaintiff's wife gave birth prematurely in the interim, to a baby that needed extensive medical care. When the insurer refused coverage, the plaintiff brought suit asserting several common law causes of action.
>
> In analyzing the case, we noted that despite attempts by the plaintiff to recharacterize the relationship between the parties, "[i]n reality, the Greanys challenge[d] the administration of ERISA plan benefits, . . ." *Greany v. Western Farm Bureau Life Ins. Co.*, 1992 U.S. App. LEXIS 20462. We said this was so because the employer's conduct "was merely a continuation of the duties it has as an employer in providing the group plan." *Id.* As a result, the state claims were preempted by ERISA.
>
> Similarly, in this case, the conduct challenged was part of the administration of an ERISA plan. DCA's representative's statements, which the Petersons claim to have relied on, were made, if at all, while admin-

istering Soo Line's employee benefit plan. Soo Line had hired DCA to administer its plan, and that is how the Petersons came into contact with DCA. Mary Peterson did not call DCA at random to request assistance with Heather's medical bills. She called it to ask about coverage because she thought that Heather was a beneficiary under Soo Line's plan. DCA's answers to Mary Peterson's inquiries, regardless of their substance, were thus provided in furtherance of its duty to administer the plan. As a result, as in *Greany*, any causes of action which arose from DCA's answers, as the Peterson's claims surely did, necessarily relate to the ERISA-governed plan and are therefore preempted by ERISA. * * *

* * * In the present case, the relation between the state law claims and the benefit plan is even closer. Here, the gravamen of the Petersons' state law claims is that they relied on DCA's statements and suffered damages as a result. Even if DCA made the statements alleged, the Petersons' cause of action requires the existence of a plan because it requires their reliance to have been reasonable. *See Trad Industries, Ltd. v. Brogan*, 246 Mont. 439, 446 (1991) (dicta); *Keil v. Glacier Park, Inc.*, 188 Mont. 455, 462 (1980) (dicta); *see also* Restatement of Contracts § 90 (1932). If the Petersons did not believe Heather was covered by the plan, no reliance on DCA's promises to pay for her health care could possibly have been reasonable. Consequently, as in *Ingersoll*, "the existence of a . . . plan is a critical factor in establishing liability under the State [claims]" and the state claims are thus preempted." (See Pet. Appendix A, pp. 3a, 4a and 5a)

II. THE PREEMPTION OF A PARTY'S COMMON LAW REMEDY BY VIRTUE OF ERISA IS NOT DEPENDENT ON THE EXISTENCE OF AN ERISA REMEDY.

On pages 8 and 9 of their Brief and in the Ninth Circuit, the Petersons argued that if they were denied their state law claims they would be left with no remedy, and

for that reason, their state law claims cannot be preempted.

The Ninth Circuit Court in this case correctly summarized the law in respect to the Petersons' argument when they noted as follows:

> "Despite the relationship discussed between the Petersons' state law claims and the Soo Line benefit plan, the Petersons argue that neither of them is either a participant in or a beneficiary of the Soo Line plan as defined by 29 U.S.C. § 1002 (7), (8) (1985). They contend that as a result, if they are denied their state law claims they will be left with no remedy. Thus they argue, their state law claims cannot be preempted.
>
> In the first instance, it may be that if benefits were due to Heather, she had a cause of action under ERISA. The Petersons' argument, however, must be rejected for an even more fundamental reason. As this court has previously held, "[t]here is simply no reason to assume that Congress intended ERISA's preemption reach to be coextensive with the Act's civil remedial scheme." *Olson v. General Dynamics Corp.*, 951 F.2d 1123 (9th Cir. 1991); *see also Porcaro v. The Colonial Life Insurance Co. of America*, 1991 U.S. Dist., LEXIS 15800 (W.D. Va.). Preemption of a party's common law remedy is not dependent on the existence of an ERISA remedy." (See Pet. Appendix A, p. 5a).

In *Olson v. General Dynamics Corp.*, 960 F.2d 1418 (9th Cir.), *certiorari denied* June 15, 1992 (112 S.Ct. 296), the Plaintiff brought a fraud claim alleging that the level of retirement benefits by an employer was misrepresented to him. The District Court had held that the misrepresentations "related to" an employee benefit plan and were thus preempted by ERISA. Olson made a creative argument that ERISA would not prohibit the wrong that Olson felt because to do so would leave a "gap" in the law. The Ninth Circuit noted:

"The policy choices reflected in the inclusion of certain remedies and the exclusion *1423 of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA. 481 U.S. at 54, 107 S.Ct. at 1556. There is simply no reason to assume that Congress intended ERISA's preemptive reach to be coextensive with the Act's civil remedial scheme. The Eleventh Circuit has addressed this precise question in a case closely analogous to the present one:

> The employees protest that to hold that ERISA preempts this fraud claim, while also holding that ERISA does not prohibit the wrong the employees feel they have suffered, leaves a "gap" in the law. That is exactly the result that obtains when Congress determines that federal law should govern a broad area to the exclusion of state regulation and chooses not to prohibit the actions formerly prohibited by state law. It is the very conflict between the federal scheme and state law that is to be avoided through preemption. To argue that Congress has created a "gap" in the law does not undermine the reasoning on which a finding of preemption is based. *Phillips v. Amoco Oil Co.*, 799 F.2d 1464, 1470 (11th Cir. 1986), *cert. denied*, 481 U.S. 1016, 107 S.Ct. 1893, 95 L.Ed.2d 500 (1987).

We agree with the Eleventh Circuit that any such gap is the concern of Congress, and so we affirm the district court's ruling that Olson's fraud claim "relates to" an employee benefit plan, and is therefore preempted by ERISA."

The decisions of the District Court and the Ninth Circuit Court of Appeals in this case correctly held that the state law claims alleged by the Petitioners arise from or relate to the Administration of an ERISA governed plan and are therefore preempted.

CONCLUSION

The Petitioner's claims in this case were preempted by ERISA. The expansive sweep of the preemption effect of ERISA as intended by Congress and as interpreted and upheld by the United States Supreme Court mandates that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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